Texas Department of Insurance

TDI Response to House Insurance Committee Request for Information of August 11, 2020

September 8, 2020

Charge One: Part A -- Implementation of legislation*

a. HB 259 (prohibition of named driver policies)
b. HB 1900 (TWIA operations and funding practices)
c. HB 2536 (RX pricing data)
d. SB 442 (flood coverage disclosure)
e. SB 1264 (prohibition of balance billing)
f. SB 1940 (temporary health insurance risk pool/1332 waiver)

* SB 1852 provided separately

HB 259, which prohibits certain practices related to the delivery, issuing of delivery, or renewing of named driver policies. Determine if there are any changes regarding policy affordability or the uninsured motorist population.

HB 259 made it unlawful to sell or renew named driver policies on or after January 1, 2020. Data on its impact is limited at this time; however, there is no data yet that suggests it has affected policy affordability or the uninsured motorist population.

TexasSure, the state program to reduce the number of uninsured motorists, gauges the number of registered vehicles not matched to a valid insurance policy—one indication of the prevalence of uninsured drivers. TexasSure's "unmatch" rate was 11% through May 2020 of fiscal year 2020, down from 12% in fiscal year 2019 and 13% in each of the previous two years.

The Texas Automobile Insurance Plan Association (TAIPA), the state's auto insurer of last resort vendor, reports that the number of drivers needing its policies is on the decline as it was the previous four years.

TDI has received one complaint about a named driver policy not being available.

HB 1900, which amends the Texas Windstorm Insurance Association (TWIA) operations and funding practices. Review the rulemaking process by the Texas Department of Insurance (TDI) and the adoption of an updated plan of operation by TWIA. Monitor whether the purchase of reinsurance has increased or declined and determine whether this provision of the legislation has had any impact on premium rates. Monitor the appointment and work of the Legislative Funding and Funding Structure Oversight Board.

To help implement HB 1900, TDI has proposed rules that are expected to be adopted in October 2020. These rules will require TWIA to disclose its methodology for calculating its 1-in-100 year probable maximum loss (or 1% PML).

The proposed rules prescribe information TWIA must provide to TDI before assessing the industry for the purchase of reinsurance to fund losses above the 1% PML. TWIA would issue any required reinsurance assessment no later than December 1 of the relevant year.

Under the proposed rules, TWIA annually must:

- Provide TDI with the data and methodology used to determine the 1% PML. TDI will post this information to its website.
- Publicly discuss the methodology at each year's first TWIA board meeting.
- Disclose its reinsurance premiums including quotes given for coverage at TWIA's statutorily required minimum coverage level (a 1% PML).

TDI defers to TWIA on the rate and reinsurance questions.

HB 2536, which requires certain reporting requirements for drug manufacturers, pharmacy benefit managers, and health insurers on certain pharmaceutical practices, including the pricing and availability of insulin. Examine its effect on drug pricing in the market and how to increase transparency in pricing associated with delivery of drugs, such as insulin, to the end user patient.

HB 2536 requires pharmacy benefit managers and health insurers to annually submit reports related to prescription drug cost transparency to TDI, which is required to aggregate and post the data. In May 2020, TDI posted the first collection of aggregated data:

- Prescription Drug Cost Transparency Issuers Excluding Medicaid and CHIP
- Prescription Drug Cost Transparency Issuers Including Medicaid and CHIP
- Prescription Drug Cost Transparency Pharmacy Benefit Managers

The insurer reports include a comparison of changes in spending and premiums related to prescription drugs from 2018 to 2019. The PBM report includes data from 2016 through 2019.

SB 442, which requires insurers that do not provide flood coverage in their policy to disclose that the policy does not cover flood events. Determine whether consumers are being properly informed of whether they have flood coverage. Examine the development of standardized disclosure forms for all insurance policies in Texas (health, homeowners, and personal auto) to provide more clarity to consumers about what the policy covers and any exclusions.

SB 442 requires providers of residential or commercial property insurance without flood coverage to include a disclosure. The disclosure, for policies initiated or renewed after January 1, 2020, must say:

"Your insurance policy does not include coverage for damage resulting from a flood even if hurricane winds and rain caused the flood to occur. Without separate flood insurance coverage, you may have uncovered losses caused by a flood."

The disclosure must be "conspicuous" as defined by the Texas Business & Commerce Code, section 1.201. However, there is no requirement that the disclosure be placed on the first page of the policy.

State law does not require insurers to file the new disclosures with TDI. However, as insurers make filings for new or revised policies, TDI checks for the disclosure as part of the state review. Since the law took effect, about 40 filings have had a flood disclosure; however, some companies did not use the specific wording required in SB 442. In those cases, TDI required the company to revise the disclosure or affirm that the correct phrasing will appear in another policy document.

Other standardized disclosures
Texas law does not require a standardized disclosure about policy coverage and exclusions in homeowners, personal auto, or other property and casualty policies.

In 2003, the Texas Legislature passed form freedom, which allowed insurers to file their own property and casualty policy forms for approval. This eliminated forms developed by the state with minimum standards for coverage.

As insurers have developed new coverage options tailored to meet consumer needs and reduce costs, it becomes increasingly important that consumers carefully compare policy coverages. Standardized disclosures could provide consumers with a consistent comparison tool to make informed decisions about their coverage options.

SB 1264, which prohibits balance billing (surprise billing) and creates an arbitration system to settle balance bills. Monitor the implementation of the mediation and arbitration programs, including the establishment of a portal on the TDI website through which requests for mediation and arbitration may be submitted. Determine whether the appropriate state agencies are enforcing the prohibition on balance billing. Review the Department's rules implementing the legislation's exception for non-emergency "elective" services to determine whether the rules limit the exception to out-of-network services that a patient has actively elected after receiving a complete written disclosure. Monitor or follow up on TDI's process for selecting the benchmarking database and determine whether the database chosen provides the most accurate available data and its sources are transparent. Evaluate the fiscal impact of the legislation on the Employees Retirement System of Texas and the Teacher Retirement System of Texas. Review costs to the systems and savings to employees and teachers.

From January through August 2020, TDI has received more than 17,000 requests for arbitration or mediation. In 2019, under the dispute resolution system then in place, TDI received 8,400 mediation requests.

In July 2020, TDI published a preliminary report on implementation of SB 1264 including the launch of an online portal for providers, health plans, and facilities to request arbitration or mediation. As the report notes:

> "Six months into the implementation of SB 1264, provider complaints about billing disputes have decreased more than 70% from the same period a year ago, and consumer complaints about balance billing have fallen by more than 95%."

SB 1264 requires TDI to issue a more comprehensive report on the impacts of the legislation each biennium. The first such report is due December 1, 2020, and the agency has issued a data call to collect more detailed information for that report.

Rule on SB 1264 exception

TDI posted a rule outlining the narrow exception when a consumer chooses an out-of-network doctor or provider at an in-network facility. The rule was first adopted on an emergency basis to meet the law January 1, 2020, implementation date and then made permanent through the normal rule-making process.

SB 1264 continued

TDI also developed a waiver form in plain language that consumers must sign at least 10 business days before receiving out-of-network care if the provider wants to balance bill the consumer instead of requesting arbitration or mediation.

- Waiver rule
- Wavier form and instructions

Benchmarking database

To select a benchmarking database, TDI performed a comprehensive selection process to identify a database that could provide the data required by SB 1264 and meet the legislation's requirements on conflicts of interest. As part of the search, TDI:

- Researched benchmarking databases certified by the Centers for Medicare & Medicaid Services as part of its qualified entity program. These databases meet federal standards for privacy and security.
- Sent a survey to nine databases that had Texas or national data.
- Received and evaluated three responses. FAIR Health was the only respondent that met all the all requirements.

TDI has made submissions to the benchmarking database optional. Health plans that contribute data get free access to other submitted data.

SB 1940, which extends to August 31, 2021, TDI's authority to revise and administer the temporary health insurance risk pool to the extent federal funds are available. Study ways to foster a competitive market and reduce the uninsured rate, including by exploring flexibility available through federal waivers. Study the impact to health care systems if the Affordable Care Act is ruled unconstitutional, including identifying which mandates, consumer protections, and subsidies will be lost and which have equivalents in state law.

In 2018, the U.S. Department of Health and Human Services and the U.S. Department of the Treasury revised the federal guidance on Section 1332 waivers. In response to the new guidance, TDI has issued a request for proposal (RFP) for an actuarial analysis as authorized by Insurance Code 1510.002. The actuarial analysis will examine the costs and options for three possible 1332 waiver strategies:

1. A reinsurance program to cover a portion of claim costs above an attachment point for each insured individual.
2. A high-risk pool, in which high-risk individuals are rated separately and possibly offered different plans from healthy individuals, and waiver funds cover a portion of claim costs for the high-risk pool.
3. An invisible high-risk pool, in which high-risk individuals are offered the same plans and rated the same as healthy individuals, and waiver funds cover a portion of claim costs for high-risk individuals.

Responses are due September 28, 2020.

The actuarial analysis will enable TDI, state leadership, and stakeholders to evaluate the potential effects of a waiver on:

- Overall enrollment in the individual market.
- Enrollment by county and on/off exchange.
- Enrollment by age and health status.
- Average premium by rating area and on/off exchange.
- Estimated federal pass-through funding.
- Estimated cost to the state.

More background on 1332 waiver options is posted on the TDI website.

Questions? Contact GovernmentRelations@tdi.texas.gov.